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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

DALE E. MANOLAKAS, as Trustee, etc.,

Plaintiff and Appellant,

v.

DIVISION OF MEDICAL QUALITY et  
al.,

Defendants and Respondents.

B173502

(Los Angeles County  
Super. Ct. No. BS081662)

APPEAL from the judgment of the Superior Court of Los Angeles County. David Yaffe, Judge. Affirmed.

Dale E. Manolakas, in pro. per., for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Taylor Carey, Acting Chief Attorney General, Carlos Ramirez, Assistant Attorney General, Adrian K. Panton and Aleksandra Sachowicz, Deputy Attorneys General, for Defendants and Respondents.

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Appellant Dale E. Manolakas is appealing the dismissal of her first amended complaint for declaratory judgment and petition for writ of administrative mandamus and/or writ of mandate. The dismissal was entered after the trial court sustained without leave to amend the demurrer of respondents Division of Medical Quality of the Medical Board of California (the Board) and the Attorney General, which is the Board's legal counsel.

Appellant is an attorney, who appears in the action in propria persona. Her 80-year-old father, Dr. George S. Manolakas, became a patient at Whittier Presbyterian Intercommunity Hospital after he fell and broke his neck on March 20, 1999. He died following 22 days of hospitalization. He was treated at the hospital by Dr. David Hubbell for the first five days and by Dr. Jeffrey Deckey for the remaining 17 days. Appellant filed complaints with the Board against each of the physicians who had treated her father. In response to an accusation of gross negligence, Dr. Hubbell stipulated to surrender his license as a physician and surgeon. He had been a licensed physician and surgeon since 1954. The Board determined that there were grounds for proceeding only against Dr. Hubbell, and did not file an accusation against Dr. Deckey, following an in-depth investigation and evaluation by two experts.

Appellant's first amended complaint and verified petition maintained that the Board should have proceeded against Dr. Deckey because he committed malpractice in the treatment of her father, failed to ensure that an autopsy would be performed by the coroner, and belatedly drafted a falsified expiration summary. She further alleged that neither the Attorney General's office nor the Board considered the opinion of the second expert before the statute of limitations expired, so there was no proper exercise of discretion. She asked the superior court to compel the Board and the Attorney General not to defer to private medical experts and to independently review the investigative findings. She also sought a declaration that the Attorney General had misinterpreted the applicable statute of limitations.

Appellant had made similar allegations in her original verified petition for writ of administrative mandamus and/or writ of mandate and complaint for declaratory

judgment. The trial court sustained respondents' demurrer to that pleading with 30 days to amend. The first amended complaint and petition, which are the subject of this appeal, made minor changes to the original pleading and retained the same causes of action. Respondents demurred on several grounds, one of which was that neither a petition for a writ of mandate nor an action for declaratory relief can preempt a discretionary decision of the Board. The trial court sustained the demurrer without leave to amend and entered a judgment of dismissal. This appeal followed.

### **DISCUSSION**

Appellant has the burden to show the manner in which the complaint can be amended to state a cause of action. (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.) She has failed to meet that burden.

Appellant contends that respondents failed to pursue the medical licensure action against Dr. Deckey because they erroneously believed that the statute of limitations had run. However, the documents attached to appellant's complaint clearly show that the reason respondents did not proceed against Dr. Deckey was that there was no factual basis for doing so. The Board had the duty to investigate complaints regarding a physician or surgeon, and was authorized by statute to delegate the investigation to its staff. (Bus. & Prof. Code, §§ 2220, subd. (a), 2224.)

The Attorney General has the power to file any proceedings which are necessary for the enforcement of laws, preservation of order, and protection of the public. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.)

"A writ of mandate will not lie to control official discretion." (*Spear v. Board of Medical Examiners* (1956) 146 Cal.App.2d 207, 213 (*Spear*).) A decision to drop a matter following an investigation is well within the limits of discretion. (*Marshall v. Fair Employment Practice Com.* (1971) 21 Cal.App.3d 680, 685.) Mandamus cannot be used to compel prosecution of every charge which an individual seeks to have pursued against a third party. (*Taliaferro v. Locke* (1960) 182 Cal.App.2d 752, 756.) Furthermore, "[t]he Declaratory Relief Act does not purport to confer upon courts the authority to control administrative discretion." (*Wilson v. Transit Authority* (1962) 199 Cal.App.2d 716,

725.) Moreover, reliance on the opinion of experts is vital to the disciplinary activities of the Board. (*Johnson v. Superior Court* (1994) 25 Cal.App.4th 1564, 1570, overruled on another point in *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 724, fn. 4.)

*Spear, supra*, 146 Cal.App.2d 207 is directly on point. The petitioner there unsuccessfully sought mandate to compel the Board to file an accusation against a medical doctor who she believed had issued a false death certificate regarding the cause of her mother's death. In affirming, the *Spear* court stated:

“Of course, the board was not required to file an accusation merely because a request was made that an accusation be filed. The board was required to consider the request and to determine, in its discretion, whether an accusation should be filed. It was not required to exercise its discretion in a particular manner. [Citation.] The court may compel an administrative agency to act, but it may not substitute its discretion for the discretion vested in the agency.” (*Spear, supra*, 146 Cal.App.2d at p. 212.)

Because the trial court here could not compel the Board or the Attorney General to exercise discretion in the manner which appellant demanded, there was no way that appellant could amend her pleading in a manner which could withstand demurrer. Therefore, the demurrer was properly sustained without leave to amend.

#### **DISPOSITION**

The judgment is affirmed.

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FLIER, J.

We concur:

COOPER, P.J.

BOLAND, J.